

General Information Letter: Illinois requires paper Forms W-4 signed by the employee.

February 2, 2005

Dear:

Your recent letter to Director Hamer was received by this office on January 10, and has been referred to the undersigned for a reply. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state in part as follows:

The purpose of my letter is for clarification on a matter that we have worked on with the Agency over the past year. Allow me to summarize the steps already taken and my request:

1. In December 2003, I wrote to you regarding a software application that we had developed that companies would license to allow their employees to prepare federal and state withholding certificates electronically, rather than using paper forms. We're requesting a ruling as to the acceptability as our research showed there might be an issue for Illinois.
2. I subsequently spoke with Kevin Richards of your staff. We discussed our process, our meeting of the IRS requirements for electronic withholding forms (per Publication 15A) and Kevin spoke with people internal to the Department. The feedback I received was positive toward our process, as it was in line with the stated mission to reduce paper forms and make processes electronic.
3. I also spoke with a member of your legal team in regard to the ruling; the feedback was that the process we'd built was acceptable, as long as it met any statutes passed by the Illinois legislature. I was advised, however, that the Agency would not issue a specific ruling as it did not want to be seen as endorsing a specific solution.

At this time, I am requesting a General Information Letter to confirm the acceptability of an electronically prepared withholding form for my clients in case of audit by the Illinois Department of Revenue.

A major retail company with a large presence in Illinois has referenced IT 01-0061-GIL dated 8/7/2001 as commentary on the process. I believe from my discussions that legislation has since occurred that makes this letter no longer valid. My client needs confirmation of this process so as to assure they are in compliance with Illinois regulations.

I have attached the original letter from 12/16/2003 that describes the steps of our process and the relevant sections of IRS Publication 15A for electronic withholding certificates.

We have received acceptance of our application's process from all other states that have their own withholding form or that utilize the federal form for their withholding elections by employees.

As noted, the Department's Matthew Crain addressed this question in IT 01-0061-GIL, dated August 7, 2001. In that letter, he advised the inquiring party that, at that time

...there is in fact no specific or official authority that allows for the use of electronic systems and signatures in meeting Illinois' requirements for the completion, filing and retention of Forms IL-W-4 and IL-W-5-NR. At this time, Illinois allows for the electronic filing of eligible individuals' personal income tax forms (Form IL-1040) (See IIT Reg. Sec. 105.100 *et seq.*) as well as eligible businesses' Forms IL-ST-1s (See IIT Reg. Sec. 750.100 *et seq.*). The Department also accepts electronic payment from these eligible individuals and businesses. Finally, the Department accepts electronic funds transfers for approximately sixteen different taxes.

As you may be aware, many Illinois forms are available electronically through the Internet, including Forms IL-W-4 and IL-W-5-NR, however, at this time, the Illinois Department of Revenue's electronic filing system does not support an electronic method for completion, filing or retention of said forms.

The Department regulations that specifically address this matter are IIT Reg. Sec. 105.100 and 760.100. Neither regulation specifically provides for the electronic filing of Form IL-W-4. The first regulation only deals with electronic filing of a personal income tax return. Furthermore, neither the mandatory nor the voluntary programs authorized under the second regulation involve withholding as it relates to the Illinois income tax. Therefore, at the present time, the DOR does not accept electronic filing of Form-IL-W-4, or any other forms not addressed in the two regulations set forth above. We have, however, discussed the issue with the relevant parties here at DOR and all are in agreement that we would accept such a procedure once authorized by rule. Therefore, the Legal Division will be drafting a regulation authorizing the type of process you address in the very near future. You can monitor its progress, once promulgated, by accessing the website above and going to "legal research" and then "proposed regulations."

As stated above, this is a GIL. It does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will

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bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax